

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: August 23, 2006

DEPT. 71

REPORTER A:

CSR#

PRESENT HON. RONALD S. PRAGER

REPORTER B:

CSR#

JUDGE

CLERK: K. Sandoval

BAILIFF:

REPORTER'S ADDRESS: P.O. BOX 120128

SAN DIEGO, CA 92112-4104

TENTATIVE RULING MOTION TO QUASH CMS CANTERA

IN RE: JCCP 4221/4224/4226&4428 – Natural Gas Anti-Trust Cases (Price Indexing)

4221-00020	UYEDA vs CENTERPOINT ENERGY INC
4221-00021	BENSCHIEDT vs AEP ENERGY SERVICES INC
4221-00022	COUNTY OF SANTA CLARA vs SEMPRA ENERGY
4221-00023	CITY AND COUNTY OF SAN FRANCISCO vs SEMPRA ENERGY
4221-00024	COUNTY OF SAN DIEGO vs SEMPRA ENERGY
4221-00025	OLDER vs SEMPRA ENERGY
4221-00026	CITY OF SAN DIEGO vs SEMPRA ENERGY
4221-00027	TAMCO vs DYNEGY INC
4221-00028	A L GILBERT COMPANY vs CORAL ENERGY RESOURCES LP
4221-00029	OBERTI WHOLESALE FOOD INC vs ENCANA ENERGY SERVICES INC
4221-00030	BROWN vs ENCANA ENERGY SERVICES INC
4221-00031	LOIS THE PIE QUEEN vs ENCANA ENERGY SERVICES INC
4221-00032	VITTICE CORPORATION vs ENCANA CORPORATION
4221-00033	COUNTY OF ALAMEDA vs SEMPRA ENERGY
4221-00034	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA vs RELIANT ENERGY SERVICES INC
4221-00035	SCHOOL PROJECT FOR UTILITY RATE REDUCTION vs SEMPRA ENERGY
4221-00036	ASSOCIATION OF BAY AREA GOVERNMENTS vs SEMPRA ENERGY
4221-00037	OWENS-BROCKWAY GLASS CONTAINER INC vs SEMPRA ENERGY
4221-00038	TEAM DESIGN DBA TIMOTHY ENGELN INC vs RELIANT ENERGY INC
4221-00039	CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER vs RELIANT ENERGY SERVICES INC
4221-00040	SACRAMENTO MUNICIPAL UTILITY DISTRICT vs RELIANT ENERGY SERVICES INC
4221-00041	SHANGHAI 1930 RESTAURANT PARTNERS LP vs ENCANA ENERGY SERVICES INC
4221-00042	PODESTA vs ENCANA ENERGY SERVICES INC
4221-00043	NURSERYMAN'S EXCHANGE OF HALF MOON BAY vs SEMPRA ENERGY

4221-00044 COUNTY OF SAN MATEO vs SEMPRA ENERGY
4221-00045 BUSTAMANTE vs WILLIAMS ENERGY SERVICES
4221-00046 PABCO BUILDING PRODUCTS vs DYNEGY INC
4221-00047 BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY vs DYNEGY INC

DEFENDANTS UNOPPOSED MOTION TO DISMISS THE SUMMONS AND COMPLAINT OF THE MASTER CLASS ACTION IS GRANTED.

DEFENDANTS MOTION TO DISMISS THE SUMMONS AND THIRTEEN NON-CLASS COMPLAINTS IS GRANTED. As to the thirteen non-class actions, Plaintiffs have failed to establish any independent contacts with California--substantial, continuous and systematic or otherwise--by any of the three Defendants that would subject them to this Court's general personal jurisdiction. Plaintiffs have also failed to establish that the Defendants are subject to specific personal jurisdiction.

As to CMS Energy: On a theory of agency, CMS Energy will only be subject to personal jurisdiction through ERM/MS&T (who has already consented to jurisdiction) if Plaintiffs show that the nature and extent of CMS Energy's control over MS&T is so pervasive and continual that MS&T should be considered nothing more than CMS Energy's agent, notwithstanding the maintenance of separate corporate formalities. See *Senora Diamond Corp. v. Superior Court* (5th Dist. 2000) 83 Cal.App.4th 523, 540-541; See also *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 683, 691. CMS Energy's self description as an "integrated energy company" does not, without more, establish pervasive and continual control of MS&T. CMS Energy's stated marketing intention to use MS&T to enhance performance of CMS energy assets show's nothing more than the parent's investor status. The close financial connection between a parent, CMS Energy, and a subsidiary, MS&T, is normal. See *Senora Diamond v. Superior Court* (2000) 83 Cal.App.4th 523, 540-541.

At first blush, CMS Energy's acknowledgment of MS&T's wrongdoing regarding round trip trading might arguably equate to acceptance of liability in the forum where the wrongdoing occurred. However, upon further consideration, an investigation into SEC allegations by a special committee of independent directors at the direction of CMS Energy as well as implementation of policies to deter or prevent future conduct would constitute a normal degree of concern, direction and management by the parent over the subsidiary under the circumstances. There is nothing pervasive or unusual about a parent articulating general policies and procedures. See *Doe v. Unocal* (9th Cir. 2001) 248 F.3d 915, 925-926. The firing and/or disciplining and/or acceptance of resignations of the subsidiaries employees under these circumstances would also be consistent with the parent's investor status.

It is inconsequential whether CMS Energy exercised any control of Field Services because Plaintiffs have not established personal jurisdiction over Field Services by way of its minimum contacts. CMS Energy, therefore, is not subject to personal jurisdiction on a theory of agency.

On the theory of representative services, Plaintiffs do not dispute that CMS Energy is a holding company with no daily operations. If MS&T were not performing its subsidiary functions (i.e. trading and marketing natural gas), CMS Energy would not have to perform these functions, CMS Energy could simply hold another type of subsidiary. See *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 543; See also *Doe v. Unocal* (9th Cir. 2001) 284 F.3d 915, 929. Plaintiffs have not established jurisdiction of CMS Energy through MS&T under a theory of representative services.

As to Cantera Gas and Cantera Natural: The only theory on which Plaintiffs assert jurisdiction over these two Defendants is as successors in interest to Field Services. The only evidence presented by Plaintiffs to establish personal jurisdiction over Field Services is the settlement order with the Commodity Futures Trading Commission which says the Commission finds that MS&T provided natural gas. . .to. . .municipal energy users throughout the United States and abroad. See Pl's Ex. 9, p.2. The fact that MS&T provided natural gas to energy users throughout the United States, arguably including California, does not establish Field Services contacts with California. Further, Plaintiffs have submitted nothing to show that Cantera Natural assumed Field Services' liabilities when it was purchased in July 2003. Plaintiffs have not established personal jurisdiction over Cantera Gas or Cantera Natural on the theory of successors in interest.
